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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2011-12
(session year)

Senate
(Assembly, Senate or Joint)

Committee on Insurance and Housing...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (July 2012)

3.9.12

Senate

Record of Committee Proceedings

Committee on Insurance and Housing

Senate Bill 466

Relating to: miscellaneous landlord-tenant provisions and prohibiting a local government from imposing a moratorium on eviction actions.

By Senator Lasee; cosponsored by Representatives Stroebel, Jacque, Litjens and Pridemore.

February 13, 2012 Referred to Committee on Insurance and Housing.

February 15, 2012 **PUBLIC HEARING HELD**

Present:	(6)	Senators Lasee, Schultz, Olsen, Wanggaard, Carpenter and C. Larson.
Absent:	(1)	Senator S. Coggs.
Excused:	(0)	None.

Appearances For

- Sen Frank Lasee — Senator - 1st District
- Bob Kinsler — WI Housing Alliance
- Rep Due Stroebel — Assembly
- Kathy Nettlesheim — Fiduciary Real Estate Develop.
- Nancy Jensen — Apart. Assn of S.C. WI
- Kim Queen — Apt Assn of S.E. WI

Appearances Against

- Nicholas Toman — Legal Aid Society
- Heidi Wegleitner
- Collin Gillis — WI Alliance for Tenants Rights
- Tony Gibart — WI Coalition Against Domistic Violence
- Vince Megna — Atty for Consumers
- Bob Andersen — Legal Action of WI
- David Spoerer — Attorney
- David Vines
- Charles Breunig
- Robert Halloway
- Bridget Maniaci — Madison Alder
- Tanya Cohen — Manufacturered Homeowners
- Pat Hammel
- Mitch XXXXXX — UW Law Prof
- Brenda Konkel

Appearances for Information Only

- None.

Registrations For

- Brad Boycks — WI Builders Assn
- Bob Welch — Apt Assn of S.C. WI
- Jon DiPiazza

Registrations Against

- Rep Chris Taylor — Assembly
- Sabrina Gentile — WI Council on Children and Families
- Mary Anglim
- Phil Baetern
- Ashley Riederer
- Ashley Wilcox — United Council
- Kyle Wildman
- Matt Guidry
- Ben Klingenberg
- Courtney Morse — United Council
- Katherine Baeten
- Paul Freund
- Analiese Eicher — United Council of UW Students
- Damon Terrell
- Tiffany Strong
- Emily Hoppe
- Harriet Rowan — registering for Sen Risser?
- Leland Pan — Associated Students of Msn
- Alexandrea Rezazadeh
- Allie Gardner
- Arthur Kohl-Riggs
- Genie Ogden
- Jessie Brown

Registrations for Information Only

- None.

February 22, 2012 **EXECUTIVE SESSION HELD**

Present:	(0)	None.
Absent:	(0)	None.
Excused:	(0)	None.

February 29, 2012 **EXECUTIVE SESSION HELD**

Present:	(6)	Senators Lasee, Schultz, Olsen, Wanggaard, Carpenter and C. Larson.
Absent:	(1)	Senator S. Coggs.
Excused:	(0)	None.

March 1, 2012 **EXECUTIVE SESSION HELD**

Present:	(7)	Senators Lasee, Schultz, Olsen, Wanggaard, Carpenter, S. Coggs and C. Larson.
Absent:	(0)	None.
Excused:	(0)	None.

March 9, 2012 **EXECUTIVE SESSION HELD**

Present:	(7)	Senators Lasee, Schultz, Olsen, Wanggaard, Carpenter, S. Coggs and C. Larson.
Absent:	(0)	None.
Excused:	(0)	None.

Moved by Senator Lasee that **Senate Amend 1 to Senate Sub Amend 1** be recommended for adoption.

Ayes:	(6)	Senators Lasee, Schultz, Olsen, Wanggaard, Carpenter and C. Larson.
Noes:	(1)	Senator S. Coggs.

ADOPTION OF SENATE AMEND 1 TO SENATE SUB AMEND 1 RECOMMENDED, Ayes 6, Noes 1

Moved by Senator Lasee that **Senate Sub 1 as amended by Senate Amend 1** be recommended for adoption.

Ayes:	(5)	Senators Lasee, Schultz, Olsen, Wanggaard and Carpenter.
Noes:	(2)	Senators S. Coggs and C. Larson.

ADOPTION OF SENATE SUB 1 AS AMENDED BY SENATE AMEND 1 RECOMMENDED, Ayes 5, Noes 2

Moved by Senator Lasee that **Senate Bill 466** be recommended for passage as amended.

Ayes:	(4)	Senators Lasee, Schultz, Olsen and Wanggaard.
Noes:	(3)	Senators Carpenter, S. Coggs and C. Larson.

PASSAGE AS AMENDED RECOMMENDED, Ayes 4, Noes 3

Tony Urso
Committee Clerk

TO: Senator Carpenter

FROM: Senator Lasee,
Chair, Senate Committee on Insurance and Housing

DATE: March 9, 2012

RE: Ballot votes for the committee on Insurance and Housing.

Pursuant to Senate Rule 25 (4) (am), the Senate Committee on Insurance and Housing is voting by ballot on the motions below. Please review and record your vote by circling "AYE" or "NO". By circling "AYE" you indicate your approval of the motion. If this ballot is not returned to 316 South, State Capitol by Friday, March 9, 2012 at 12:00 p.m., you will be designated as not voting.

Senate Bill 466. Relating to miscellaneous landlord-tenant provisions and prohibiting a local government from imposing a moratorium on eviction actions:

[MOTION 1]: *To recommend adoption of Senate Amendment 1 to Senate Substitute Amendment 1 to Senate Bill 466:*

(AYE) NO

[MOTION 2]: *To recommend adoption of Senate Substitute Amendment 1 as amended by Senate Amendment 1 to Senate Bill 466:*

(AYE) NO

[MOTION 3]: *To recommend Passage of Senate Bill 466 as amended:*

AYE (NO)

Senate Bill 504. Relating to limiting the authority of a city, village, or town to enact a development moratorium ordinance:

[MOTION 4]: *To recommend adoption of Senate Amendment 1 to Senate Bill 504:*

AYE (NO)

[MOTION 5]: *To recommend Passage of Senate Bill 504 as amended by Senate Amendment 1:*

AYE (NO)

Signed,

Tim Carpenter 3/9/12

Senator Tim Carpenter Date

TO: Senator Larson

FROM: Senator Lasee,
Chair, Senate Committee on Insurance and Housing

DATE: March 9, 2012

RE: Ballot votes for the committee on Insurance and Housing.

Pursuant to Senate Rule 25 (4) (am), the Senate Committee on Insurance and Housing is voting by ballot on the motions below. Please review and record your vote by circling "AYE" or "NO". By circling "AYE" you indicate your approval of the motion. If this ballot is not returned to 316 South, State Capitol by Friday, March 9, 2012 at 12:00 p.m., you will be designated as not voting.

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[MOTION 1]: *To recommend adoption of Senate Amendment 1 to Senate Substitute Amendment 1 to Senate Bill 466:*

(AYE) NO

[MOTION 2]: *To recommend adoption of Senate Substitute Amendment 1 as amended by Senate Amendment 1 to Senate Bill 466:*

AYE (NO)

[MOTION 3]: *To recommend Passage of Senate Bill 466 as amended:*

AYE (NO)

Senate Bill 504. Relating to limiting the authority of a city, village, or town to enact a development moratorium ordinance:

[MOTION 4]: *To recommend adoption of Senate Amendment 1 to Senate Bill 504:*

AYE (NO)

[MOTION 5]: *To recommend Passage of Senate Bill 504 as amended by Senate Amendment 1:*

AYE (NO)

Signed,

Senator Chris Larson — 3/9/12 Date

DUE
12 NOON

TODAY

TO: Senator Coggs

FROM: Senator Lasee,

Chair, Senate Committee on Insurance and Housing

DATE: March 9, 2012

RE: Ballot votes for the committee on Insurance and Housing.

Pursuant to Senate Rule 25 (4) (am), the Senate Committee on Insurance and Housing is voting by ballot on the motions below. Please review and record your vote by circling "AYE" or "NO". By circling "AYE" you indicate your approval of the motion. If this ballot is not returned to 316 South, State Capitol by Friday, March 9, 2012 at 12:00 p.m., you will be designated as not voting.

Senate Bill 466. Relating to miscellaneous landlord-tenant provisions and prohibiting a local government from imposing a moratorium on eviction actions:

[MOTION 1]: *To recommend adoption of Senate Amendment 1 to Senate Substitute Amendment 1 to Senate Bill 466:*

AYE (NO)

[MOTION 2]: *To recommend adoption of Senate Substitute Amendment 1 as amended by Senate Amendment 1 to Senate Bill 466:*

AYE (NO)

[MOTION 3]: *To recommend Passage of Senate Bill 466 as amended:*

AYE (NO)

Senate Bill 504. Relating to limiting the authority of a city, village, or town to enact a development moratorium ordinance:

[MOTION 4]: *To recommend adoption of Senate Amendment 1 to Senate Bill 504:*

AYE (NO)

[MOTION 5]: *To recommend Passage of Senate Bill 504 as amended by Senate Amendment 1:*

AYE (NO)

Signed,

Senator Spencer Coggs

3-9-12

Date

TO: Senator Olsen

FROM: Senator Lasee,
Chair, Senate Committee on Insurance and Housing

DATE: March 9, 2012

RE: Ballot votes for the committee on Insurance and Housing.

Pursuant to Senate Rule 25 (4) (am), the Senate Committee on Insurance and Housing is voting by ballot on the motions below. Please review and record your vote by circling "AYE" or "NO". By circling "AYE" you indicate your approval of the motion. If this ballot is not returned to 316 South, State Capitol by Friday, March 9, 2012 at 12:00 p.m., you will be designated as not voting.

Senate Bill 466. Relating to miscellaneous landlord-tenant provisions and prohibiting a local government from imposing a moratorium on eviction actions:

[MOTION 1]: *To recommend adoption of Senate Amendment 1 to Senate Substitute Amendment 1 to Senate Bill 466:*

(AYE) NO

[MOTION 2]: *To recommend adoption of Senate Substitute Amendment 1 as amended by Senate Amendment 1 to Senate Bill 466:*

(AYE) NO

[MOTION 3]: *To recommend Passage of Senate Bill 466 as amended:*

(AYE) NO

Senate Bill 504. Relating to limiting the authority of a city, village, or town to enact a development moratorium ordinance:

[MOTION 4]: *To recommend adoption of Senate Amendment 1 to Senate Bill 504:*

(AYE) NO

[MOTION 5]: *To recommend Passage of Senate Bill 504 as amended by Senate Amendment 1:*

(AYE) NO

Signed,

Luther Olsen 3/9/12

Senator Luther Olsen Date

TO: Senator Lasee

FROM: Senator Lasee,
Chair, Senate Committee on Insurance and Housing

DATE: March 9, 2012

RE: Ballot votes for the committee on Insurance and Housing.

Pursuant to Senate Rule 25 (4) (am), the Senate Committee on Insurance and Housing is voting by ballot on the motions below. Please review and record your vote by circling "AYE" or "NO". By circling "AYE" you indicate your approval of the motion. If this ballot is not returned to 316 South, State Capitol by Friday, March 9, 2012 at 12:00 p.m., you will be designated as not voting.

Senate Bill 466. Relating to miscellaneous landlord-tenant provisions and prohibiting a local government from imposing a moratorium on eviction actions:

[MOTION 1]: *To recommend adoption of Senate Amendment 1 to Senate Substitute Amendment 1 to Senate Bill 466:*

(AYE) NO

[MOTION 2]: *To recommend adoption of Senate Substitute Amendment 1 as amended by Senate Amendment 1 to Senate Bill 466:*

(AYE) NO

[MOTION 3]: *To recommend Passage of Senate Bill 466 as amended:*

(AYE) NO

Senate Bill 504. Relating to limiting the authority of a city, village, or town to enact a development moratorium ordinance:

[MOTION 4]: *To recommend adoption of Senate Amendment 1 to Senate Bill 504:*

(AYE) NO

[MOTION 5]: *To recommend Passage of Senate Bill 504 as amended by Senate Amendment 1:*

(AYE) NO

Signed,

Frank Lasee 3/9/12

Senator Frank Lasee Date

TO: Senator Wanggaard

FROM: Senator Lasee,
Chair, Senate Committee on Insurance and Housing

DATE: March 9, 2012

RE: Ballot votes for the committee on Insurance and Housing.

Pursuant to Senate Rule 25 (4) (am), the Senate Committee on Insurance and Housing is voting by ballot on the motions below. Please review and record your vote by circling "AYE" or "NO". By circling "AYE" you indicate your approval of the motion. If this ballot is not returned to 316 South, State Capitol by Friday, March 9, 2012 at 12:00 p.m., you will be designated as not voting.

Senate Bill 466. Relating to miscellaneous landlord-tenant provisions and prohibiting a local government from imposing a moratorium on eviction actions:

[MOTION 1]: *To recommend adoption of Senate Amendment 1 to Senate Substitute Amendment 1 to Senate Bill 466:*

(AYE) NO

[MOTION 2]: *To recommend adoption of Senate Substitute Amendment 1 as amended by Senate Amendment 1 to Senate Bill 466:*

(AYE) NO

[MOTION 3]: *To recommend Passage of Senate Bill 466 as amended:*

(AYE) NO

Senate Bill 504. Relating to limiting the authority of a city, village, or town to enact a development moratorium ordinance:

[MOTION 4]: *To recommend adoption of Senate Amendment 1 to Senate Bill 504:*

(AYE) NO

[MOTION 5]: *To recommend Passage of Senate Bill 504 as amended by Senate Amendment 1:*

(AYE) NO

Signed,

Senator Van Wanggaard 3/9/12
Date

TO: Senator Schultz

FROM: Senator Lasee,
Chair, Senate Committee on Insurance and Housing

DATE: March 9, 2012

RE: Ballot votes for the committee on Insurance and Housing.

Pursuant to Senate Rule 25 (4) (am), the Senate Committee on Insurance and Housing is voting by ballot on the motions below. Please review and record your vote by circling "AYE" or "NO". By circling "AYE" you indicate your approval of the motion. If this ballot is not returned to 316 South, State Capitol by Friday, March 9, 2012 at 12:00 p.m., you will be designated as not voting.

Senate Bill 466. Relating to miscellaneous landlord-tenant provisions and prohibiting a local government from imposing a moratorium on eviction actions:

[MOTION 1]: *To recommend adoption of Senate Amendment 1 to Senate Substitute Amendment 1 to Senate Bill 466:*

(AYE) NO

[MOTION 2]: *To recommend adoption of Senate Substitute Amendment 1 as amended by Senate Amendment 1 to Senate Bill 466:*

(AYE) NO

[MOTION 3]: *To recommend Passage of Senate Bill 466 as amended:*

(AYE) NO

Senate Bill 504. Relating to limiting the authority of a city, village, or town to enact a development moratorium ordinance:

[MOTION 4]: *To recommend adoption of Senate Amendment 1 to Senate Bill 504:*

(AYE) NO

[MOTION 5]: *To recommend Passage of Senate Bill 504 as amended by Senate Amendment 1:*

(AYE) NO

Signed,

Dale W. Schultz

Senator Dale Schultz

Friday, March 09, 2012
Date

4606

Vote Record
Committee on Insurance and Housing

Date: 2/29

Moved by: _____ Seconded by: _____

AB_____ SB_____ Clearinghouse Rule_____

AJR_____ SJR_____ Appointment_____

AR_____ SR_____ Other_____

A/S Amdt _____

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

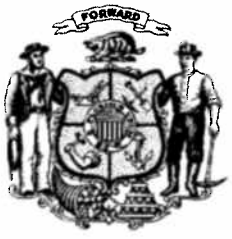
☐ Passage ☐ Adoption ☐ Confirmation ☐ Concurrence ☐ Indefinite Postponement

☐ Introduction ☐ Rejection ☐ Tabling ☐ Nonconcurrence

Committee Member	Aye	No	Absent	Not Voting
Senator Frank Lasee, Chair	☐	☐	☐	☐
Senator Dale Schultz	☐	☐	☐	☐
Senator Luther Olsen	☐	☐	☐	☐
Senator Van Wanggaard	☐	☐	☐	☐
Senator Tim Carpenter	☐	☐	☐	☐
Senator Spencer Coggs	☐	☐	☐	☐
Senator Chris Larson	☐	☐	☐	☐
Totals:	____	____	____	____

☐ Motion Carried ☐ Motion Failed

WISCONSIN STATE LEGISLATURE



February 14, 2012

TO: Committee on Housing

FROM: Ross Kinzler, Executive Director

RE: Recommendations for SB466/AB561 "Abandonment Process"

The problems with the process of abandoned personal property are not entirely addressed by AB 561/SB 466. We suggest the following:

1. If the abandoned personal property is a manufactured home subject to a security interest lien not having notice to the secured party could cause lenders to halt lending for manufactured homes that are treated as personal property. We recommend if the abandoned property is a mobile or manufactured home, that notice by the landlord by ordinary mail or certified mail be given to the tenant and any documented secured party. Please insert the following on page 6, line 5 before the stricken material. "If the abandoned property is a manufactured or mobile home, the landlord shall give the tenant and any documented secured party notice, personally or by ordinary mail addressed to the tenant's or documented secured party's last known address of the landlord's intent to dispose of the personal property by sale or other appropriate means."

2. The proceeds of abandoned property if the property was a manufactured home should go the appropriation formerly numbered 20.143(1)(jp) (manufactured home rehabilitation and recycling grant.) This may require this additional language: Create 20.165(2)(kd) to read:

20.165 (2) (kd) Manufactured housing rehabilitation and recycling. All moneys received under s. 710.16 (7) (b) for the administration of and for grants under s. 101.934.

3. The concept of "storage charges" is nebulous in current law. On what basis does the landlord determine and defend a "storage charge?" We recommend that language be added that provides that the landlord can determine what the storage charge may be. We suggest on page 6, language be added defining "storage charge" to mean an amount not to exceed the prorated daily equivalent of rent based on the most recent monthly lease rate:".

3. Landlords in abandonment situations are also generally left with unpaid rent. We believe that unpaid rent should be allowed to be deducted from the sale proceeds. On page 6, line 12 after "sale" insert ", unpaid rent,".

Wisconsin Housing Alliance is the voice of factory-built housing and is located at 301 N. Broom Street, Suite 101, Madison WI 53707 Voice 608.255.3131 Fax 608 255 5595 Visit us on the Web at www.housingalliance.us or email at info@housingalliance.us

determines is appropriate. The tenant is responsible for any costs that the landlord incurs with respect to disposition of the abandoned personal property.

SECTION 8. 704.05 (5) (a) 2. of the statutes, as affected by 2011 Wisconsin Act 32, is amended to read:

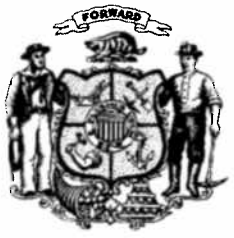
704.05 **(5)** (a) 2. ~~Give the tenant notice, personally or by ordinary mail addressed to the tenant's last-known address, of the landlord's intent to dispose of the personal property by sale or other appropriate means if the property is not repossessed by the tenant. If the tenant fails to repossess the property within 30 days after the date of personal service or the date of the mailing of the notice,~~ If the landlord ~~may dispose~~ disposes of the property by private or public sale ~~or any other appropriate means. The,~~ the landlord ~~may~~ shall deduct ~~from~~ send the proceeds of the sale minus any costs of sale, and any storage charges if the landlord has first stored the personalty under ~~subd. 1. If the proceeds minus the costs of sale and minus any storage charges are not claimed within 60 days after the date of the sale of the personalty, the landlord is not accountable to the tenant for any of the proceeds of the sale or the value of the property. The landlord shall send the proceeds of the sale minus the costs of the sale and minus any storage charges~~ to the department of administration for deposit in the appropriation under s. 20.505 (7) (h).

SECTION 9. 704.05 (5) (a) 3. of the statutes is repealed.

SECTION 10. 704.05 (5) (c) of the statutes is renumbered 704.05 (5) (b) and amended to read:

704.05 **(5)** (b) *Rights of 3rd persons.* The landlord's ~~lien and~~ power to dispose as provided by this subsection ~~apply~~ applies to any property left on the premises by the tenant, whether owned by the tenant or by others. ~~That lien has priority over any ownership or security interest, and the~~ The power to dispose under this

WISCONSIN STATE LEGISLATURE



MADISON OFFICE
31 South Mills Street, Madison, Wisconsin 53715
www.legalaction.org | tel 608-256-3304 | toll-free 800-362-3904 | fax 608-256-0510

LEGAL Action
OF WISCONSIN
40 Years of Justice

TO: Senate Committee on Insurance and Housing

FROM: Bob Andersen

RE: SB 466, relating to miscellaneous landlord-tenant provisions and prohibiting a local government from imposing a moratorium on eviction actions

DATE: February 15, 2012

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide civil legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Housing law is one of the major priorities of the organization.

I was involved in the process that was created long ago by the legislature and the Department of Agriculture, Trade and Consumer Protection to create the administrative code that regulates landlord-tenant affairs. Since that time, I have been involved as a member of several study groups established by DATCP over the years to monitor the regulations and to make improvements to the regulations. Those study groups included representatives of landlords and tenants from around the state, who worked well together in revising the code.

At the end of the day, the landlords and tenants who participated in those discussions were happy with the resolutions they had reached.

This legislation violates the spirit of those discussions. It also dismantles the protections that tenants have under current law.

I. The Legislation Provides for the Systematic Elimination of *Fundamental Rights* of Tenants Regarding (1) Property Rights Over Security Deposits and Over Their Own Personal Belongings; (2) the Ability to Seek Help from Law Enforcement, Health Care or Safety Services; and (3) the Ability to Seek Redress from Building Inspectors or Health Care Inspectors.

The ***legislation destroys the concept that underpins the regulation of landlord tenant affairs*** in Wisconsin. When the landlord-tenant administrative code was created, there were two choices that policy makers had. They could either provide for enforcement by expanding the

bureaucracy of DATCP or the Department of Justice to employ state investigators whose job it was to enforce the law. Or they could create what is called the concept of ***private attorney generals*** – which means that ***consumers*** can enforce their own rights through legal rights and legal action. This concept of ***private attorneys general*** is the same concept that applies to the enforcement of rights under the Wisconsin Consumer Act.

The legislators chose the latter method of enforcement – by ***private attorneys general*** – rather than to create another bureaucracy. The means through which this is accomplished is through section 100.20 (5) of the statutes, which provides that any violation of an of a rule adopted by DATCP is subject to a penalty of double damages, plus reasonable attorney fees, where the victim suffers a pecuniary damage. The reason for the award of reasonable attorney fees is that it enables the victim to have access to court to enforce his or her rights, by providing for the fees of an attorney which is essential to the bringing of a court action.

This legislation destroys that concept by eliminating the ***self help enforcement*** of tenants for (1) the ***return of their security deposits***; (2) the ***right to petition the local building inspector or health care department*** without fear of being evicted; and (3) the right not to be subject to ***phony lease*** provisions that threaten ***illegal confession of judgment, award of reasonable attorney fees to intimidate, coerce or bully tenants into sacrificing rights that are granted by the State of Wisconsin.***

II. Elimination of the Tenant's Property Right to the Return of Tenants' Own Security Deposits

It eliminates the right of tenants to possession of their money which was deposited as a security deposit, by eliminating any right of the tenant to ***enforcement*** of that right. It does this by copying the current security deposit provisions of the landlord-tenant administrative code of DATCP in the statutes. By copying this code into the statutes, the legislation ***supplants*** the administrative code. The agency cannot continue to maintain the code provisions in the face of the legislation. ***As a result, the enforcement mechanism that exists for the administrative code – a penalty of double damages plus reasonable attorney fees – for refusal to return security deposits – no longer exists under this legislation. That is because the refusal to return security deposits will no longer be an administrative code violation – subject to the penalties in s. 100.20 (5) of the statutes. The legislation, by design, contains no means of enforcement or penalty for refusal to return a security deposit. An action can be filed in court, but there is no provision for attorney fees that would enable a low income tenant to access that court and no penalty against a landlord who arbitrarily refuses to return a security deposit. With no penalty, there is no reason for a landlord to comply.***

IT IS THE REFUSAL OF LANDLORDS TO RETURN SECURITY DEPOSITS THAT IS LARGELY THE REASON WHY THE DATCP LANDLORD-TENANT CODE WAS CREATED IN THE FIRST PLACE! It was the number one complaint of DATCP for all consumer complaints at the time the code was created. ***To this day, the refusal of landlords to return security deposits ranks second or third among all complaints – even with the***

enforcement that exists under the code.

Even under current law, many landlords will not return security deposits until they have to. In the context of current law, that means until they are threatened with a law suit. In my own experience, when I was in law school, my landlord would not return my security deposit, even after several calls to his office, until I went into his office to demand the return of the security deposit. These landlords rely on the fact that most tenants do not want to have to go through the bother of demanding their security deposits back – even though the money is their own and they have every right to the return of the deposit – because they cleaned the premises to a spotless condition and they cause no damage whatsoever.

With the enactment of this legislation, almost all landlords will follow this approach. There is no enforcement, so why should they return the money.

In the process, landlords are able to keep all the security deposits for the length of the leases and to use them to make money through investments. In terms of big landlords, the amount of money involved is huge. Now, the law does not require landlords to pay interest on these monies of the tenants which they have been able to use for their own investments – although probably it should. But, at the very least, tenants should be able to get their money back, minus any lawful deductions.

For many tenants whose income is small or who are poor, these security deposits are vitally important for tenants to be able to move to their next rental unit. The next rental unit will require a security deposit and tenants desperately need the return of the previous deposit to rent the new one.

Another problem with the bill is that it contains a flaw in its treatment of security deposits. It specifies how the security deposit is to be returned where the tenant vacates before the termination of tenancy, but not how it is to be returned if the tenant vacates at the end of the tenancy.

III. Elimination of the Tenant's Right to Seek Law Enforcement Services, Health Services or Safety Services OR to Seek Redress from Building Inspectors or Health Inspectors

A. Seeking Law Enforcement, Health Care or Safety Services

Under current law, ***a rental agreement is void*** if the landlord does ***any of the following*** because ***a tenant has contacted law enforcement services, health services or safety services***:

(1) increase rent
(2) decrease services
(3) bring an action for possession of the premises
(4) refuse to renew a rental agreement

(5) threaten to do take any of the action under subs. (1) to (4)

The bill would change this to say that ***a provision in a lease is void*** if the landlord does any of these things, ***but the landlord is free to do these things, whether or not there is such a provision! In other words, a landlord can coerce, intimidate or bully a tenant into NOT contacting law enforcement, NOT contacting vitally important health services, or NOT contacting safety services – by threatening to increase rent, decrease services, bring an action for possession of the premises, refuse to renew a rental agreement or threaten any of the above.***

It is essential for the law to provide that the rental agreement is void, in order to get landlords to not do these things. This is consistent with the general concept of allowing people to enforce the law as ***private attorneys general***. The only other alternative to preventing landlords from engaging in such reprehensible conduct is to create a Class H felony for this conduct or to create a bureaucracy that has the capacity to require and suspend licenses. Nobody wants either of those two options. So, the deterrent must be to void the rental agreement.

As repugnant as these actions are in general, in denying people the ability to contact law enforcement, health, or safety services, imagine what this means for a victim of domestic violence! They will be intimidated by their landlord so as not to contact law enforcement that may be essential to their very lives!

B. Elimination of the Tenant's Right to Seek Redress from Building Inspectors, Health Care Inspectors or the Like

The bill proposes to create a new s. 704.07 (3)(bm), which prohibits a tenant from reporting a condition to a building code inspector, any elected official, or housing code enforcement agency until first notifying the landlord, ***in writing***, and waiting for the landlord to take ***adequate time to investigate and rectify the problem.***

So, if the gas goes out in the winter or the pipes are broken and water is overflowing, the tenant is first supposed to notify the landlord ***in writing***, before notifying the building inspector or the agency of any elected official.

The problem with this legislation is that it does not cover situations where time does not allow for writing a request and waiting for the response of the landlord. Of course, a tenant may be able to contact other entities in emergency situations, but isn't the tenants reflex likely to be to contact building code departments or the departments of any elected official? And isn't the response of these other entities likely to be file a report of those circumstances with the building code offices or the offices of any elected official?

For any other building code problem that is not an emergency, who is going to determine whether the landlord has taken adequate time to fix the situation? How about a landlord who lives in Florida and an agent who can't be reached or who doesn't respond. Without an answer from the

landlord, how is the tenant to proceed?

IV. Elimination of Enforcement of Prohibitions Against Landlords for Maintaining Illegal Lease Provisions

Some lease provisions are repugnant to social policy and are illegal. There is no such thing as ***confession of judgment*** in Wisconsin. You have to go to court for a judgment. A lease cannot provide that the tenant will bear the ***costs of attorneys*** for the landlord. A lease cannot relieve a landlord of liability for the landlord's own acts of negligence. A lease cannot impose liability on a tenant for injuries caused by things beyond the tenant's control. These provisions in a lease are intended to do only one thing, since they cannot be enforced: to coerce, intimidate, or bully a tenant into submission or into the surrender of their rights.

Once again, the law could provide that a landlord who includes these things in a lease has committed a Class H felony. Or the law could expand DATCP to create licensing for landlords and the suspension of licenses for including these things in a lease.

Nobody wants to do either of these things. So the law has to find some way to deter this conduct and that way is to make the rental agreement void. ***Making the repugnant lease provision void, as this legislation does, does nothing. The lease provision already is void.*** The lease itself has to be void This appears in proposed section 704.02 that would be created by this legislation.

V. Prohibition Against a Local Moratorium on Evictions

The only time we have ever heard of such a thing is the policy of the court system in Milwaukee County not to enter evictions during Christmas. Maybe some other jurisdictions have such a policy. Otherwise, this is unimaginable. Under this legislation, though, Milwaukee County, or any other county, would not be able to do this, if this involves an ordinance, directly or indirectly.

VI. Elimination of Tenant's Property Right Over Their Own Personal Belongings

A. Elimination of the Property Right

Under current law, a landlord may do one of three things when a tenant leaves personal property behind after removing from the premises: (1) store the property on or off the premises, with a lien for the cost of storage; (2) give the tenant 30 days notice to pick up the property; or (3) store the property without a lien.

This bill changes that to allow the landlord to ***presume*** that the property is abandoned and to dispose of it in any manner the landlord deems appropriate. Or the landlord may sell the property and send the proceeds to the Department of Administration.

The problem arises where the tenant has been evicted, or for some other reason has been forced

to leave the premises – such as a medical emergency. Or, the tenant has removed all of the other personal belongings, but forgotten one or two items. The proposal in the bill makes no accommodation for these circumstances. Under the bill, the landlord can just automatically and immediately dispose of the items that belong to the tenant.

If the landlord sells the property, the bill does not allow the landlord to give the proceeds to the tenant. They have to go to DOA. Neither the landlord nor the tenant is given the option that exists under current law to give the proceeds to the tenant. The landlord has the right to dispose of the property in any way the landlord deems appropriate, except that the specific language relating to selling the property mandates that the proceeds have to go to DOA.

This bill gives poor people who are in a desperate situation no chance to recover their property, if the landlord so desires. It is one thing for a landlord to be left with a unit full of personal property for some period of time that makes it difficult to re rent. It is another for the property to be left for only a couple of days or for only one or two items to be left behind. The tenant should be given some chance for recovery of the property. Perhaps 30 days is too long for a unit full of personal belongings – as exists under current law. But a shorter time period could be allowed for other circumstances.

B. <u>The "Presumption" that Property is Abandoned May be Rebutted, Subjecting the Landlord to Liability.</u>

Any time the law creates a presumption, it allows that presumption to be rebutted, by definition. This provision in this bill will just invite litigation over whether the property was truly abandoned. The landlord may "presume" the property is abandoned, but the tenant can rebut that presumption in court by showing evidence that the property was not abandoned. If the tenant does that and the landlord has already disposed of the property, the landlord is at risk for being liable for damages for the cost of the personal property, as well as for taking the action to dispose of the property.

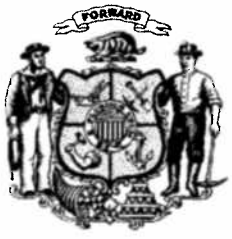
C. <u>The Legislation Makes No Exception for Medicine and Medical Equipment, as Does Current Law.</u>

Current law recognizes the need for medicine and medical equipment, by saying no lien can be established for storing the same. The bill makes no exception under any circumstance for medicine and medical equipment. The points made above regarding giving some time for a tenant to recover the property and regarding a presumption of abandonment are especially significant when it comes to medicine or medical equipment. The legislation needs to make some accommodation for medicine or medical equipment or the landlord faces the prospect of some substantial liability for simply automatically disposing of these items.

D. The Landlord's Right to Dispose of the Property Surpasses the Right of a Third Party Who Has a Prior Lien on the Property

So, a merchant who sold the tenant furniture and who retains a lien on the furniture is out of luck. This is unfair for the merchant and probably means that merchants will not sell furniture to tenants if the transaction requires that they maintain a lien.

WISCONSIN STATE LEGISLATURE



Testimony

WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE

307 South Paterson Street, Suite 1
Madison, Wisconsin 53703
Phone: (608) 255-0539 Fax: (608) 255-3560

To: Members of the Senate Committee on Insurance and Housing
From: Tony Gibart, Policy Coordinator, Wisconsin Coalition Against Domestic Violence (WCADV)
Date: February 15, 2012
Re: Opposition to Senate Bill 466

Chairman Lasee, Members of the Committee, thank you for the opportunity to offer testimony today. My name is Tony Gibart, and I represent the Wisconsin Coalition Against Domestic Violence (WCADV). WCADV is the statewide membership organization that represents local domestic violence victim service providers and survivors. We oppose Senate Bill 466 because it would encourage lease provisions and housing practices that prevent tenants from reporting crime and seeking emergency services. We believe this will cause some housing providers to re-victimize crime victims. As I say that I want to be clear that, while WCADV has strong criticism of this bill, we in no way mean to suggest that these negative consequences are intended by the authors or supporters of the legislation.

Section 704.44, which renders leases that penalize tenants for contacting emergency services unenforceable, protects crime victims including victims of domestic violence and child abuse. Without this provision, victims will forego reporting crimes or calling for emergency medical assistance for fear of retribution from their landlords.

WCADV supported the enactment of s. 704.44 two sessions ago, because we received numerous reports of landlords taking retaliatory actions against domestic violence victims who called police or other emergency services. Such actions not only re-victimize survivors; they constitute horrible public policy. When victims are prohibited from contacting police, rapists and violent perpetrators remain at large. Unfortunately, these rental practices are not rare. One study found that eleven percent of evictions of low-income domestic violence victims were directly based on their victimization.[1] Section 704.44 renders leases that contain these types of provisions unenforceable. SB 466 would make these leases enforceable and only render the offending portion of the lease unenforceable in court.

Although it may seem like commonsense to only render the specific lease provisions prohibiting contacting emergency services unenforceable, this would essentially eliminate the only disincentive landlords have from including and coercing tenants to honor these repugnant provisions. As a consequence, victims who are first beaten and battered physically may be bullied and re-victimized as tenants.

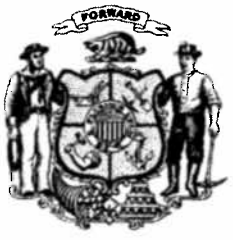
Under current law, the only disincentive landlords have from including provisions related to contacting emergency services or other provisions contrary to public policy is that they run the risk of the lease being found entirely unenforceable in court. *If this disincentive is removed, there would be no reason for a landlord to not write these provisions in their leases.* If a tenant calls for emergency services, say for example, a domestic violence victim contacts law enforcement, the landlord can threaten eviction, charge a fee, take some other adverse action. Most likely, the victim will be ignorant of the law or unable or unwilling to go to court and pay the fee or move out—all simply for being the victim of a crime. The worst case scenario for the landlord is that the tenant takes the landlord to court and the court declares the retaliatory action unenforceable and void. However, the landlord is in no worse position than had the landlord not included the provision in the lease in the first place. *So, any landlord who wants to include a provision related to contacting emergency services or any other illegal provision in a lease would have*

[1] National Law Center on Homelessness & Poverty and the National Network to End Domestic Violence, *Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country*, February 2007.

every incentive to include these provisions in the lease. In most cases, the landlord will be able to get the unknowing tenant to comply with the provision, despite its illegality. For the few cases, in which tenants are able to assert their rights in court, the landlord has suffered no penalty. In sum, this bill encourages the rational landlord, to include these harmful provisions and most tenants will honor them.

Thank you again for the opportunity to provide testimony. I would be happy to answer any questions.

WISCONSIN STATE LEGISLATURE



APARTMENT ASSOCIATION
South Central Wisconsin

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608-826-6226 • Fax 608-826-6236 • www.aascw.org

February 15, 2012

To: Members of the Senate Committee on Insurance and Housing

Re: SB 466

The Apartment Association of South Central Wisconsin urges you to support Senate Bill 466.

The approximately 1,000 rental property owners we represent and work with, own and manage tens of thousands of rental properties located throughout Wisconsin.

Our members are housing providers who strive to offer well managed housing that contributes quality housing opportunities and vital tax base resources to meet the needs of Wisconsin's communities. Ranging from mom and pop owners to property managers of conventional, student, senior, tax credit, non-profit, for profit, rural and urban, transitional and public housing...our members fulfill diverse housing needs throughout our state.

We support SB because it clarifies, modernizes and standardizes WI landlord/tenant laws.

When a property is sold, the buyer can dispose of any personal property the seller leaves behind....there is no burden placed on the buyer to move, bond, provide storage, make attempts to notify the seller to return to pick up the items they left behind, and then be required to post and handle a sale for the tenant, long after the lease contract has expired, and disburse proceeds, if there are any, as current law requires of the landlord.

SB 466 addresses a policy issue, of why a landlord would ever be required to provide moving and storage for a former resident? This bill removes the burden placed on the landlord to take care of personal property the tenant leaves behind. Our members experiences show it is a significant expense in time and labor for the landlord to have a bonded mover (or obtain a bond) and bonded storage, send notices to the tenant who chose to leave the property behind to notify the tenant, meet for pick up of items or sell the items left behind. Property that is invariably unimportant to the tenant is left behind, abandoned for the landlord to have to deal with. Current laws create significant, unnecessary liability for the landlord which transfers to increased cost of housing for all residents. SB 466 recognizes the responsibility of the tenant to remove all personal property and reduces increases in housing costs for all tenants.

SB 466 clarifies handling of security deposits by placing into state law provisions of administrative code ATCP 134 which authorizes landlords to deduct from a tenant's security deposit. All other parts of ATCP 134 remain in tact, and 100.20(5) remains in effect continuing to provide penalties for ATCP 134. In effect, rules will remain rules in ATCP 134, and all parties to the lease agreement will continue to have remedies available to them as provided for in our courts.

This bill creates statutory language that clarifies in the case of a tenant leaving the property before the end of the lease, the 21 day time line for the landlord to return the security deposit and accounting of any withholding will begin when the property is re-rented, which is when damage to the contract agreement has been mitigated; or when the existing lease contract terminates, reaching the actual agreed upon date in the contract between the parties. This proposal provides much needed clarification, statewide, for a specific situation that occurs when the tenant doesn't fulfill the terms of the lease, and the landlord has an unknown amount of unpaid rent, utilities and damages until the property is re-rented or the contract terminates.

Creating uniform state law requiring a landlord to provide a tenant with a standardized check-in form upon move in is a best practice and protection for the tenant. This practice should be standardized in the statewide in the statutes, along with requiring landlords to disclose to prospective tenants, building code violations that have not been corrected by the compliance date.

We believe the tenant has similar responsibility to notify the landlord in writing of any problems with the property. This bill creates 'a right to repair' their property law providing the landlord the opportunity to correct the problem before using public resources as first notification. AB 561 does not prevent tenants from contacting local officials or building inspection departments for information, it simply requires the tenant to first make contact with the landlord to rectify the problem.

SB 466 provides for severability in leases, which is consistent with basic contract law in Wisconsin. While some argue this change will overturn Baierl vs McTaggert, we believe a more simple law that places lease contracts in step with all other contracts under state contract law is needed; and we point out SB 466 is not charting new territory. Both houses of the legislature passed law turning over a Supreme Court decision on economic loss doctrine. SB 466 standardizes Wisconsin contract law statewide by making lease contracts consistent with all other state contract laws.

Provisions in SB 466 address the problem of tenants holding over in the property after the lease contract has expired...which is a problem for both landlords and tenants. The landlord with a property rented to the next resident, due to the existing tenant not vacating, incurs significant cost to store the next resident's property and provide housing for the new resident, to fulfill the contract agreement, while also incurring the costs and labor involved with the tenant who remains after their lease contract has terminated. The landlord incurs very significant increased costs due to tenant hold over which are passed along in rents, thereby increasing the cost of housing for other tenants. A tenant who does not abide by the lease terms and holds over the end of the lease also creates great inconvenience for the incoming tenants with the new lease. SB 466 is a much needed reform to make whole the owner and protect residents damaged by other tenants' poor choices.

To manage and maintain properties, pay mortgages and sustain local tax base, rental housing requires a high percent occupancy rate. Properties with lower occupancy rates struggle with lack of cash flow to provide maintenance and service to the residents, are likely to have financial pressures to pay the mortgage obligations and property taxes, and spiral down quickly, preventing them from retaining vitality and providing needed housing for the community. Evictions are not something owners want to do, but when necessary, they should not be prevented through regulations and moratoriums.

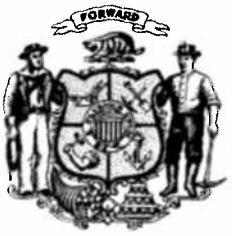
AASCW has been teaching a program called "Options to Avoid Evictions" for the past five years. We have partnered with United Way of Dane County, with Richland and Grant County including the UW-Platteville, and in Sauk County with a collaborative network of service providers.

Rental housing providers are in the business of having occupancies, not vacancies. We teach case managers, residents and landlords about options they can use to reduce the risk of an eviction, but we also recognize evictions are a necessary legal recourse when there is a failure to perform under the lease contract.

We strongly support SB 466 and urge you to pass this bill.

Nancy Jensen
Executive Director
Apartment Association South Central WI

WISCONSIN STATE LEGISLATURE



Frank Lasee

WISCONSIN STATE SENATOR

FIRST SENATE DISTRICT

Testimony for bill SB-466

Landlord/Tenant Bill

Senate Committee on Insurance and Housing

February 15, 2011

The purpose of SB-466 is to provide additional structure to standardize state statute for some of the most common issues that lead to conflicts between landlords and tenants, and sometimes leads to lawsuits.

By providing these regulations, the landlords and tenants will be on the same page when it comes to what they should expect from their landlord/tenant relationship. We hope this will reduce conflict and lawsuits between these groups, and the costs that are associated with such suits. When costs increase due to unnecessary lawsuits, it results in higher rents for the tenants.

The amendment that we have introduced makes clear how a landlord will handle abandoned manufactured homes or mobile homes, as well as defines what a storage charge will be. It also strikes the language that would have a tenant contact the landlord first before contacting an elected official about a problem with their rental property.

Frank Lasee

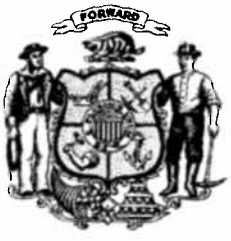
Frank Lasee
Wisconsin State Senator
First Senate District

Post Office Box 7882
Madison, Wisconsin 53707-7882

Chair: Committee on Insurance and Housing

(608) 266-3512
Sen.Lasee@legis.wi.gov


WISCONSIN STATE LEGISLATURE


FORWARD

LEGAL AID SOCIETY 1916 OF MILWAUKEE

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Thomas G. Cannon
Executive Director

Senator Frank Lasee
Room 316 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

February 15, 2012

RE: Senate Bill 466

Dear Senator Lasee,

The Legal Aid Society of Milwaukee is one of America's oldest public-interest law firms. Each year, the Legal Aid Society provides legal services to more than 8,000 low-income Milwaukee County residents. Since it was founded 96 years ago, Legal Aid has been a champion for consumer and tenant rights. We represent many students, low income residents, and the elderly in landlord/tenant disputes. The Legal Aid Society helps negotiate agreements between these tenants and landlords when the occasional but inevitable disagreement occurs. We are writing in opposition to Senate Bill 466 because it will severely unbalance the equilibrium between tenant's rights and the rights' of property owners.

Based on our extensive experiences in landlord-tenant cases, we know that the vast majority of landlords are honest in dealing with tenants. Under the current law, their rights are protected. However, as advocates for tenants, it is not uncommon to see unscrupulous landlords withhold security deposits without justification, fail to remedy substandard properties, and make unreasonable demands on tenants. Our belief is that there needs to be a balance to protects both parties' interests. The changes in this bill strip tenants of important rights without remedying any equally burdensome requirements on landlords. The result would be a legal system dangerously tilted in favor of landlords.

Of the seven main changes to Wisconsin landlord tenant law proposed in SB466 and AB561, the four that will have the most detrimental impact on Wisconsin citizens are as follows: (1) ending meaningful enforcement of illegal lease provisions, (2) making it more difficult to contact government officials about a property with code violations, (3) eliminating penalties for failing to disclose building code violations, (4) and eliminating penalties and enforcement for withholding security deposits. Fix. Fix.

As this committee understands, the rules governing landlord/tenant law are split between Wisconsin Statute §704 and the Agriculture, Trade & Consumer Protection Regulations § 134. The ATCP § 134 gets its enforcement mechanism through Wisconsin Statute §100.20(5) which provides double actual damages and reasonable attorney's fees. Wisconsin Statute § 704 allows for actual damages and no more.

By moving the rules on security deposits and building code violation notices to §704, the bill is eviscerating the substantive rules. Under the current law, a landlord who refuses to return

a security deposit is subject to double damages, plus reasonable attorney's fees. While this is a higher cost than the deposit alone, it is necessary to provide an incentive for landlords to comply with the law. Under the proposed changes, there would be no incentive for a landlord to return a security deposit. If a landlord fails to return a deposit, the tenant's only remedy is to bear the cost of litigation to get the actual deposit back. But there is no penalty as the legal remedy is the same deposit that should have been return initially. Therefore the disreputable property owner's incentive becomes to hold all security deposits until a court action is commenced. Then, they can return the deposits in order to avoid litigation without penalty. Tenants will be discouraged from seeking their deposits by the difficulty and cost of filing a lawsuit. Since only a portion of tenants will be sophisticated enough to sue, the landlord will keep many security deposits with no penalty.

Making illegal rental agreement provisions severable creates similar problems; the unscrupulous landlord has no incentive to act according to the law. Since a large portion of students, the elderly and the poor will not have the resources or knowledge to recognize an illegal rental clause, a landlord can include illegal provisions and attempt to enforce them. The small number of those clauses that are found illegal in court won't have any detrimental effect on the landlord, since the only punishment is not enforcing something that is unenforceable. But other tenants will accept that the contract is binding, even if the terms of the contract are illegal.

Finally, the building code restrictions are wrong and possibly unconstitutional. In Legal Aid's experience, contacting the Department of Neighborhood Services is not a panacea for tenants' problems. The building inspectors provide property owners with reasonable time to fix violations. Furthermore, it is not our experience that tenants make such petitions casually; the landlord tends to know of the problems and refused to fix it. Adding more requirements and regulations between landlords, tenants and building inspectors is counterproductive. Finally, preventing a citizen from contacting a government official may violate the constitutional guarantee to petition the government. A state law preventing a citizen from contacting his or her elected or municipal officials in order to discuss a potential violation of the law is problematic under many constitutional doctrines.

These changes will provide some minimal benefits to landlords but they will be devastating for tenants. Students, the poor and the elderly will lose large portions of their income to unjustly held security deposits. They will be taken advantage of by unjust leases and it will be harder for them to get dangerous properties fixed. This bill will not remedy those problems but will make them worse.

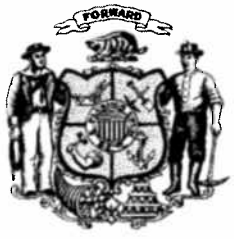
This bill will immediately harm the working class and poor residents of Wisconsin, but that is just the most egregious harm this bill will cause. Students on college campuses and seniors in retirement communities will lose money and rights because of this bill. The decreased protections for tenants and loss of attorneys fee will decrease safe housing for working families and make it harder for the working poor to gain access to the justice system.

The Legal Aid Society asks you to vote against AB 561.

Sincerely,

Nicholas Toman
Staff Attorney

WISCONSIN STATE LEGISLATURE



PROPOSED AMENDMENTS TO SB466
ALDER BRIDGET MANIACI
CITY OF MADISON
FEBRUARY 15, 2012

SECTION 14. 704.07 (2) (bm) of the statutes is created to read:
704.07 **(2)** (bm) A landlord shall disclose to a prospective tenant, before entering into a rental agreement with or accepting any earnest money or security deposit from the prospective tenant, any building code or housing code violation to which all of the following apply:

1. The landlord has received notice of the violation from a local housing code enforcement agency.
2. The violation affects the dwelling unit that is the subject of the prospective rental agreement or a common area of the premises.
3. The violation has not been corrected.
4. The date by which the violation must be corrected has not yet occurred; or has already passed.

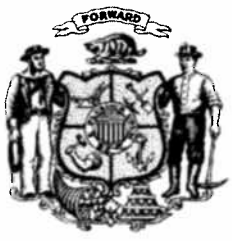
SECTION 15. 704.07 (3) (bm) of the statutes is created to read:
704.07 **(3)** (bm) If the premises is in need of any repair or other maintenance, before reporting the problem to a building inspector, elected public official, or local housing code enforcement agency, a tenant shall make a good faith effort to first notify the landlord. ~~in writing and allow the landlord adequate time to investigate and rectify the problem.~~

SECTION 20. 704.28 of the statutes is created to read:
704.28 Withholding from security deposits. (1) STANDARD PROVISIONS.
When a landlord returns a security deposit to a tenant after the tenant vacates the premises, the landlord may withhold from the full amount of the security deposit only amounts reasonably necessary to pay for any of the following:
(a) Documented ~~T~~tenant damage, waste, or neglect of the premises.
(b) Unpaid rent for which the tenant is legally responsible, subject to s. 704.29.

(c) Payment that the tenant owes under the rental agreement for utility service provided by the landlord but not included in the rent.
(d) Payment that the tenant owes for direct utility service provided by a government-owned utility, to the extent that the landlord becomes liable for the tenant's nonpayment.
(e) Unpaid monthly municipal permit fees assessed against the tenant by a local unit of government under s. 66.0435 (3), to the extent that the landlord becomes liable for the tenant's nonpayment.
(f) Any other payment for a reason provided in a nonstandard rental provision document described in sub. (2).

NEW SECTION 704.01 (1M) ("Landlord" defined.)
"Landlord" means a person who is an owner of property, or their designee, who, through a lease or rental agreement, provides a unit for occupancy.


WISCONSIN STATE LEGISLATURE


FORWARD

PUBLIC INTEREST LAW SECTION

February 15, 2012

TO: Members, Senate Committee on Housing and Insurance

FROM: Attorney Heidi M. Wegleitner, Board Member
Public Interest Law Section of the State Bar of Wisconsin

RE: Opposition to Senate Bill 466 (landlord provisions)

The Public Interest Law Section (PILS) of the State Bar of Wisconsin opposes Senate Bill 466. PILS is particularly concerned with the following provisions of this proposed legislation.

Senate Bill 466 takes provisions regarding mandatory disclosures and withholding security deposits from Wis. Admin Code § ATCP 134 and inserts them into Chapter 704 of the Wisconsin Statutes, which removes remedies authorized by Wis. Stat. § 100.20(5) for violations of ATCP 134, including double damages, costs and reasonable attorney's fees. The apparent motivation for putting these into the statute is to preempt the rule and render the tenant protections regarding disclosure and security deposit withholding unenforceable. Renters make up 32% of the Wisconsin population. This bill will make it extremely difficult for approximately one-third of the Wisconsinites to obtain accountability and justice in landlord/tenant matters. The inability of lower income and working class families to afford an attorney is well-documented. Civil legal services programs do not have resources to represent tenants in these types of disputes and rely heavily on contribution from the private bar to represent low income tenants with security deposit and disclosure claims. Elimination of these critical remedies, including reasonable attorney's fees, will thwart efforts to connect low income tenants to volunteer attorneys.

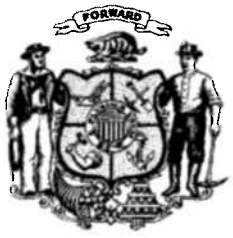
This bill also overturns *Baierl v. McTaggart*, 2001 WI 107, 245 Wis. 2d 632, 629 N.W.2d 277, which held that a landlord could not enforce a rental agreement against a tenant which contains a prohibited provision by making prohibited provisions severable, leaving the remainder of the rental agreement intact. The holding in *Baierl* has had a positive impact in eradicating unlawful lease provisions from leases used around Wisconsin and most tenants are no longer subject to intimidating, lopsided provisions and when they are, they have the option to void the rental agreement.

Senate Bill 466 grants landlords much more power and discretion to dispose of property left behind by tenants. Current law requires landlords to store the property and provide notice to the tenant of the right to claim the property within 30 days or the landlord may sell the property and keep the proceeds equivalent to the cost of sale and storage. The remainder of the proceeds would be sent to the department of administration to fund homeless services. Under this bill, landlords would be allowed to do whatever they want with the property and would not be required to send sale proceeds to the department of administration.

The bill also prevents a political subdivision from enacting or enforcing an ordinance that imposes a moratorium on a landlord from pursuing an eviction. Under this bill, a tenant would not be able to report a problem to a building inspector, elected public official or local housing code enforcement agency without first notifying the landlord in writing and allowing the landlord "adequate time to investigate and rectify the problem". The Wisconsin legislature should not be making a tenant experiencing a housing habitability crisis jump through hoops before being able to obtain assistance from public officials.

Senate Bill 466 further tips the balance of power in landlord-tenant relations to landlords by eliminating important deterrents for abusive landlord practices and necessary tenant protections, including the right of a tenant to report problems to public officials. Ultimately, the bill creates perverse incentives for landlords to retaliate and otherwise violate the law because it will be nearly impossible for tenants to be able to enforce their rights without the current remedies available due to *Baierl* and Wis. Stat. § 100.20(5), including double damages, costs and reasonable attorney's fees.


WISCONSIN STATE LEGISLATURE


FORWARD

MADISON OFFICE
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www.legalaction.org | tel 608-256-3304 | toll-free 800-362-3904 | fax 608-256-0510

LEGAL Action
OF WISCONSIN
40 Years of Justice

TO: Senate Committee on Insurance and Housing

FROM: Bob Andersen Bob Andersen

RE: SB 466 – Landlord Tenant Provisions – Problems with the Substitute Amendment LRB 0335/4

DATE: February 28, 2012

Section 1. Prohibits a municipality from establishing a moratorium on evictions. Milwaukee County court system has had a moratorium during Christmas. Otherwise never heard of such a thing. Should not preempt local municipalities from local control over short term moratoriums. This is a function of calendaring cases by the courts. This is a matter of local control by the municipalities and by the courts. This could also be a violation of the separation of powers, by the legislature intruding on the role of the judiciary in scheduling cases.

Section 3. Severability of rental agreement provisions. Under current law, landlords may not include the following provisions in leases to intimidate or bully tenants into sacrificing their rights. These are provisions that already violate state laws:

-- tenants will pay all landlord's actual attorney fees
-- tenants will confess judgment
-- tenants are liable for all damage done to the premises, no matter who caused it
-- landlords are not liable for any damages, including those caused by their own intentional or negligent acts

Under current law these are unconscionable provisions. They make the whole rental agreement unenforceable, just like unconscionable provisions do in consumer transactions. Without such a voiding of the rental agreements there will be nothing to stop landlords from including these provisions in rental agreements – as they have for many years in the past -- so as to continue to intimidate tenants into sacrificing their rights under state law. This section makes the provisions alone unenforceable. They already are under current law. There needs to be a way to ensure that landlords will not include unconscionable provisions in a rental agreement and voiding the rental agreement achieves that result in a way that is

well recognized under contract law, where provisions are unconscionable.

Section 8,9. The landlord may immediately dispose of a tenant's property after the tenant removes from the premises – no matter whether there was a medical emergency or otherwise. Under current law, the landlord must give the tenant some time to pick up the belongings. This section makes no exception, no matter what the cause or how few things the tenant has left behind. Suppose the tenant needs more than one trip to move the belongings. Does not matter. Landlord can throw things out on the street immediately. No exception for critically important medicine or medical equipment.

Section 12. Does not matter if merchant has a lien on furniture bought on time. The merchant's lien is overridden by the landlord's right to dispose of the property immediately. So, the merchant loses out and tenants will not be able to buy furniture on time, because merchants will not sell furniture to them on credit for fear of this result.

Section 16. Relates to requirement that landlord give notice to tenants of building code violations. Takes provision out of DATCP code. Once the same provision as appears in code is put into the statutes, administrative agency cannot continue same provision in code. Under current law, for a violation of DATCP code, the tenant ***shall*** recover double damages, together with costs and reasonable attorney fees. S. 100.20(5). Under this proposal (section 23) the penalty is only that this ***may*** constitute an unfair trade practice. Even then, there is no assurance that the tenant is entitled to double damages, costs and reasonable attorney fees – because this is an oblique reference to an unfair trade practice and does not refer specifically to double damages plus reasonable attorney fees. Under this sub. there will be no penalty or remedy where a landlord refuses to notify the tenant of building code violations.

Section 21. Exactly the same problem for return of security deposits. This was the number one complaint against landlords when the DATCP code was written and remains among the top two or three complaints to this day. It was largely the reason for the code to be created. By putting this provision in the statutes, this bill will preclude DATCP from maintaining this provision in the code. As a result, the law that tenants ***shall*** receive double damages plus costs and reasonable attorney fees for violations will be eliminated. The only penalty or remedy that will remain is the obscure or oblique reference in section 23 of the bill that a violation of this may be an unfair trade practice. This is only an indirect reference to double damages, costs and reasonable attorney fees at best. This is an oblique reference to an unfair trade practice and does not refer specifically to double damages plus reasonable attorney fees There will be no penalty for landlords who refuse to return security deposits. We will be right back to where we were when the DATCP code was

created 30 years ago.

Section 23. Not only does this section make any remedy available to the tenant a weak reference to its being an unfair trade practice, it also prohibits DATCP from issuing an order or rule that ***changes*** any right or duty under this chapter (the whole landlord-tenant chapter)! The term ***"change"*** is not a legal term. The law is that an agency may adopt rules that do not ***conflict*** with statutes or which do not ***exceed the agency's authority.*** This use of the word ***change*** could include an act by the agency to ***construe a statute – which is what agencies do, under their authority to implement statutes.*** This could mean that DATCP would be unable to issue any order or rule that ***construes*** any statute under the entire landlord tenant chapter of the statutes! ***Literally taken, this would eliminate DATCP's entire landlord tenant administrative code!*** This is because DATCP's authority is only to construe the statutes in adopting an administrative code. That is the same authority any agency has in implementing statutes.

No enforcement on security deposit

only permissive but no punch

STILL can't support

- section 23 times in ⓦ sect 16 & 21

- followed one biggest objection

medical exception - shorten time to pick up


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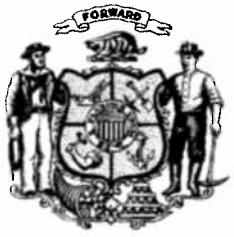
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LEGAL Action
OF WISCONSIN
40 Years of Justice

TO: Senate Committee on Insurance and Housing

FROM: Bob Andersen

RE: SB 466 – Landlord Tenant Provisions – Problems with the Senate Substitute Amendment 1 and Senate Amendment 1 to the Substitute Amendment

DATE: March 8, 2012

1. **Tenants Will Not be Able to get Their Security Deposits Back, Because the Substitute Amendment Says Only that a Violation *MAY* be an Unfair Trade Practice – Under Current Law the Refusal to Return a Security Deposit *IS* an Unfair Trade Practice and the Tenant *SHALL* Recover Double Damages Plus Reasonable Attorney Fees.**

Under the substitute amendment the tenant's ***right*** to enforcement is eliminated. Not only does the substitute say ***may*** instead of ***shall***, it says only that it may be an unfair trade practice. There is no automatic connection to the specific statute that guarantees a tenant double damages and reasonable attorney fees – s. 100.20 (5). A court could find that this is an unfair trade practice, and still not be able to provide relief for the tenant, because s. 100.20 (5) provides double damages and reasonable attorney fees ***FOR A RULE VIOLATION***. The violation of this statutory provision is not a rule violation – it is a violation of a statute. There is nothing that automatically triggers s. 100.20 (5). ***We know from past experience that where tenants do not have any guaranteed enforcement for wrongful withholding, landlords will not return deposits.***

This was the number one complaint against landlords when the DATCP code was written and remains among the top two or three complaints to this day. It was largely the reason for the code to be created. By putting this provision in the statutes, this bill will preclude DATCP from maintaining this provision in the code. As a result, the law that tenants ***shall*** receive double damages plus costs and reasonable attorney fees for violations will be eliminated. The only penalty or remedy that will remain is the obscure or oblique reference in the substitute amendment that a violation of this may be an unfair trade practice. This is only an indirect reference to double damages, costs and reasonable attorney fees at best. This is an oblique reference to an unfair trade practice and does not refer specifically to double damages plus reasonable attorney fees There will be no penalty for landlords who refuse to return security deposits. We will be right back to where we were when the DATCP code was created 30 years ago.

2. **There will be No Enforcement for Landlords to Give Tenants Notice of Building Code Violations.**

The substitute takes the provision out of DATCP code. Once the same provision as appears in code is put into the statutes, the administrative agency cannot continue same provision in code. Under current law, for a violation of DATCP code, the tenant ***shall*** recover double damages, together with costs and reasonable attorney fees. S. 100.20(5). Under this proposal the penalty is only that this ***may*** constitute an unfair trade practice. Even then, there is no assurance that the tenant is entitled to double damages, costs and reasonable attorney fees – because this is an oblique reference to an unfair trade practice and does not refer specifically to double damages plus reasonable attorney fees. Under this sub. there will be no penalty or remedy where a landlord refuses to notify the tenant of building code violations

3. **Senate Amendment 1 and Senate Substitute Amendment 1 – Landlords Can Immediately Dispose of Tenants Property**

The substitute amendment, like the original bill, allows landlords to immediately dispose of tenants property that has been left behind. Amendment 1 says that landlords cannot do this, and must follow current law, where ***they do not include a notice in the lease that they may dispose of property immediately. This amendment does not solve the problem, because these provisions will simply be made a part of form leases.*** The problem arises when the tenant has to quickly leave the premises, not when the lease is signed. No one is anticipating that tenants will be in this dilemma when the lease is signed. What the law should do is to ***give the tenants notice when the tenant leaves, or by law, say that the tenant has a certain number of days to pick up the property.*** Some distinction should be made where only a couple of items left behind, as opposed to where the unit is full of furniture, which can make it difficult to re rent.

Otherwise, the landlord may immediately dispose of a tenant's property after the tenant removes from the premises – no matter whether there was a medical emergency or otherwise. Under current law, the landlord must give the tenant some time to pick up the belongings. This section makes no exception, no matter what the cause or how few things the tenant has left behind. Suppose the tenant needs more than one trip to move the belongings. Does not matter. Landlord can throw things out on the street immediately.

4. **The Landlord Can Dispose of the Tenants Property Notwithstanding the Rights of a Merchant to a Lien on Rented Property.**

It does not matter if a merchant has a lien on furniture bought on time. The merchant's lien is overridden by the landlord's right to dispose of the property immediately. So, the merchant loses out and tenants will not be able to buy furniture on time, because merchants will not sell furniture to them on credit for fear of this result.

5. No Municipality or Local Court May Enforce a Short Term Moratorium on Evictions

The Milwaukee County court system has had a moratorium during Christmas. Otherwise never heard of such a thing. The law should not preempt local municipalities from local control over short term moratoriums. This is a function of calendaring cases by the courts. This is a matter of local control by the municipalities and by the courts. This could also be a violation of the separation of powers, by the legislature intruding on the role of the judiciary in scheduling cases.

6. Not Only are Tenants Enforcement Rights Eliminated by the Remedy Section of the Substitute Amendment – DATCP's Ability to Adopt Administrative Rules is Compromised.

Not only does the remedy section make any remedy available to the tenant a weak reference to being an unfair trade practice, it also prohibits DATCP from issuing an order or rule that ***CHANGES*** any right or duty under this chapter (the whole landlord-tenant chapter)! The term ***"change"*** is not a legal term. The law is that an agency may adopt rules that do not ***conflict*** with statutes or which do not ***exceed the agency's authority.*** This use of the word ***change*** could include an act by the agency to ***construe a statute – which is what agencies do, under their authority to implement statutes.*** This could mean that DATCP would be unable to issue any order or rule that ***construes*** any statute under the entire landlord tenant chapter of the statutes! ***Literally taken, this would eliminate DATCP's entire landlord tenant administrative code!*** This is because DATCP's authority is only to construe the statutes in adopting an administrative code. That is the same authority any agency has in implementing statutes.

Any landlord will be able to challenge any DATCP rule in court on grounds that it ***CHANGES*** a statute, if this substitute amendment is enacted.

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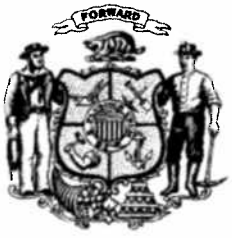

Herrick & Kasdorf, L.L.P.

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Scott N. Herrick *Court Commissioner*
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David R. Sparer

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Peter Zarov *of counsel*
Roger Buffett *of counsel*

TO: Senate Committee on Insurance and Housing

FROM: **Attorney David R. Sparer**
an attorney that has practiced for over 30 years in the area of both commercial and residential landlord tenant law

RE: SB 466 / 5
PROBLEMS with the bill - Significant Problems

DATE: March 8, 2012

The provisions of this proposal have not been thought through carefully, and do have many probably unintended consequences which should not be overlooked.

There are hundreds of thousands of residential renters in our state. There are tens of thousands of commercial tenants in our state. These provisions will apply to each and every one of them. We all must be conscientious and careful when adopting dramatic modifications. In many cases, the use of one single word in a particular provision can have far reaching meanings, given the history of case law interpretations of existing landlord tenant law. It is clear that the fine details and effects of these proposals have not been given careful review. It is clear that these provisions, if adopted, will create a serious level of havoc among all commercial and residential landlord tenant relations.

A few general and VERY important points. These proposals all appear to be focused upon changing the balance of duties and obligations between ***residential*** landlords and tenants. These proposals, in almost every aspect, put the terms of ATCP 134, the ***Residential*** Rental Practice Code, into the state statute, Chapter 704, and make changes to them. However, Chapter 704, unlike ATCP 134, governs all landlord tenant relations, whether residential or commercial; whether industrial or retail or manufacturing. These changes, which in every single instance, reduce the rights of tenants, will reduce the rights not only of residential tenants, but also the rights of all commercial tenants of every single type. That is not an effect to be glossed over or taken lightly. How will that actually work? Is that honestly intended? Note that section 16 specifically allows a commercial Lease to include contrary provision, as it relates exclusively to the requirements of § 704.07. However, no such commercial tenancy exception exists a to any other portion of Chapter 704 amended by this broad brush proposal. Given this effect upon commercial enterprises, are the proponents satisfied that these are wise amendments for application to commercial tenancies as well? Will these changes enhance the desire of out of state companies to rent space here and create jobs, or will it make out of state companies leery of doing so?

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Comments on really important problems with specific sections (many other problems exist too, which are simply not mentioned here to avoid making this too long):

Sections 8, 9 & 13. This is section about disposal by a landlord of abandoned property. The proposal specifically states that the landlord "may dispose of the abandoned personal property ***in any manner that the landlord, in its sole discretion, determines is appropriate."*** (emphasis added). There is not the slightest doubt that this means that the landlord can dispose of such property in any fashion what so ever. This absolutely means that the landlord can sell the property, regardless of its actual value, to his brother for $10.00.

Consider these couple of examples. A couple rents a nice house on the lake for $2,500 per month and lives there for 8 years. No problems, tenants are quite perfect. They move with notice at end of the lease. Mistakenly, unintentionally, when they move they leave two paintings in an upstairs closet. They just forgot they were there in the chaos of moving. Market value of the paintings - roughly $50,000 each. OK, that is the example. They don't realize their error until four months later. They contact the landlord who says, "under this new law I sold them and pocketed the money, too bad." The law allows this. It really does. Under the current rule, no such action could be taken without giving the tenants written notice. Had they gotten written notice, they would have just gone to pick it up. Had the landlord said, "it cost me $100 to store this stuff for you," the landlord could have insisted upon being paid that $100. Fine, no problem. This is real. This is really how this provision will work.

One more example. Commercial tenant rents shopping center space and gets loan from commercial bank to pay for start up. Lender files lien against assets of business, which includes $80,000 of shelving, counters, computers, phone system, etc. Tenant defaults on loan and on rent, and just shuts down. All people involved just move out of state. Tenant owes back rent of $5,000.00, and owes the bank $70,000. Under this proposal, the property is abandoned, and landlord "may dispose of the abandoned personal property ***in any manner that the landlord, in its sole discretion, determines is appropriate."*** Landlord in its sole discretion determines that it is appropriate to sell all the property, even though the bank has a lien on all of it, and sells it to another tenant in a different location, and sells it for $15,000.00. Landlord pockets $10,000 more than the back rent owed, and bank gets nothing, even though it had a lien on all of it. This is real. This is actually how this proposed provision works as written.

Now note - Section 9 says that if the landlord disposes of the property in a sale, "the landlord ***may*** send the proceeds of the sale minus any costs ..." to the landlord for storage

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and disposal, to the state. Big Point - this provision uses the word "may." Pursuant to ***Shands vs. Castrovinci***, 115 Wis.2d 352, 340 N.W.2d 506 (1982), use of the word "may" means it is totally discretionary, and use of the word "shall" means it is mandatory. So, use of this word here means that the landlord can send the money to the State if they choose to, BUT they have no obligation to do so what so ever. Why are the proponents choosing to use this word? Shouldn't it be "shall"?

Do note that the amendment only somewhat changes the current words. Do note that the current language is the provision that uses the word "may." Yes that is true. However, that language allows the landlord to sell the abandoned property (after first giving notice to the tenant and following the tenant's failure to then get the property), but requires that the landlord turn over the proceeds of the sale to the State. The "may" applies to permitting the landlord to deduct, for the costs incurred by the landlord, from what is turned over to the State. The landlord can choose to make that deduction or can choose to turn over all the money. See the difference. In this new proposal, the landlord's choice is instead whether to turn over any money at all to the State, or instead just choose to keep it all. This seems tantamount to legalizing theft, doesn't it?

Section 17. This provision sort of maps ATCP 134.04(2). However, it has SERIOUS problems as written. It requires that for the prohibition to apply that all 4 subsections must apply as well. One of the requirements is that "the landlord has received notice of the violation from a local housing code enforcement agency." That is a HUGE Problem. Why is that a problem? Most areas of the state do not have any code enforcement agency. It's true. They really do not. This means, then, that a landlord is permitted to knowingly rent out defective housing without letting the tenant know about the defect. That is really what it means in most of the state.

Subsection (2)(b) of ATCP 134.04, provides additional protection for situations where the defects are really significant. For example, no working heat, plumbing does not work, etc. The ATCP Code provides that these conditions are so important that a landlord is obligated to provide notice to a prospective tenant of these deficiencies, even if no code authority has cited them. This proposal quite clearly appears to remove any such obligation. Isn't this legalizing fraud? Are you sure that is a good idea?

I have a real case right now, from rural Sun Praire. No building inspector exists for this rural township. There was no actual heat source in the house. The landlord deceived the tenants into believing that there was. The water well was just stuck into the ground in a corn field near the house. After having problems with the water the tenant called the DNR who condemned the well. Under this proposal it is the case that this landlord had every

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right to rent to these tenants, even though he knew about the deficiencies, and to deceive them and trick them. This proposal says that he had this right, even though he knew about these deficiencies, because no building inspector had told him it was a violation.

AND, even for those cases where this law does apply, what is the enforcement mechanism? No right for the AG's office to sue, or DATCP to do so. No attorney fees for prevailing tenants who sue. What is the enforcement mechanism then?

Section 22. The security deposit return provisions. This provision will apply to all commercial tenancies too. Is that the conscious choice being made here?

This provision is identical to ATCP 134.06(2) and (3), and subsection (1) is addressed as well in a different section. However, the entirety of subsections (4) and (5) have been dropped. Is that meant to essentially repeal those subsections? Will it be a proper legal position, should this get adopted, to enforce ATCP 134.06(4) through the § 100.20(5) enforcement mechanism, or is it being repealed? Does the transfer of the exact terms of 134.06(3) into the statute mean that one can not enforce these provisions by using the § 100.20(5) mechanism?

Has this been thought through? Really? ATCP 134.06(4) is the section that sets out the requirement for what must be included in the security deposit deduction statement. Without those requirements in place there is no requirement about what is included. In other words, a landlord can write the tenant "I deducted $850.00 from your deposit, here's the balance enclosed." Period. Isn't it the case that there will be an increase of litigation if it is no longer requiring that a landlord provide an itemized statement of each deduction and the amount deducted for each itemized item? Is that wise to remove that requirement?

Section 23. This section makes a Lease void if it contains certain provisions. **This section applies to all tenancies, both commercial and residential.** One of the provisions prohibits a landlord from making a tenant pay the landlord's attorney fees. Every single commercial Lease I have ever been involved in negotiating contains this provision. Every one. This proposal would make that illegal. Is that the intent desired? It is the effect of this language if adopted?

This provision also is meant to copy ATCP 134.08 into the statute, but uses different language in the introduction. Two different court rulings, one at the Supreme Court and one following case before the Court of Appeals, have interpreted the exact manner in which the 134.08 rules shall be applied to real life situations. The language chosen to be used in the introduction completely messes up the determinations by those court cases. The cases

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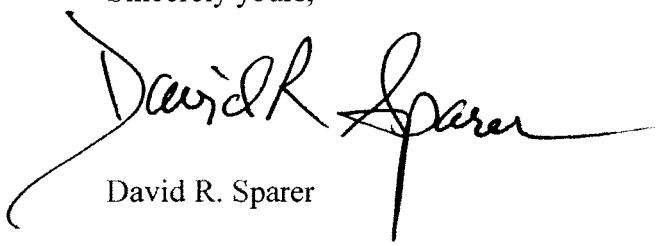
are ***Baierl vs. McTaggart***, 2001 WI 107, 245 Wis. 2d 632, 629 N.W.2d 277 and ***Dawson vs. Goldammer***, 2003 WI App 3, 259 Wis.2d 664, 629 NW 2d 432 (Ct App 2002). Why move these provisions word for word, but not the introduction, from ATCP 134 into the statute? Why have them apply to commercial tenancies as well as residential tenancies? Why is this a worthwhile thing to do? If it already is the law pursuant to ATCP 134.08, why bother? The proposal seemingly invalidates the findings and rulings in these two appellate cases, even though it appears that there is an effort to save them. This is just not well thought through at all.

Finally section 36: This language ***will not*** preserve the right to get double damages and attorney fees for tenants who have suffered violations. This proposed provision chooses to use the word "may" rather than "shall" as currently used in § 100.20(5) when describing the right to the enforcement mechanism of double damages and attorney fees. As noted above, pursuant to ***Shands vs. Castrovinci***, 115 Wis.2d 352, 340 N.W.2d 506 (1982), when interpreting this exact section, use of the word "may" means it is totally discretionary, and use of the word "shall" means it is mandatory. So, use of the word "may" here means that the judge can allow enforcement or not. It is completely discretionary. Why are the proponents choosing to use the word "may"if they are being honest about trying to preserve this right for enforcement? The actual effect upon the ability to enforce rights currently provided in ATCP 134, after the adoption of the entire proposal is very much unclear, and very likely is seriously compromised. Does this not deserve some careful thought, rather than expedited adoption?

Sincerely yours,



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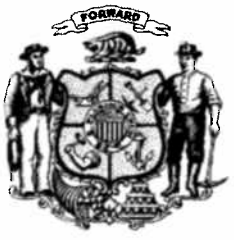

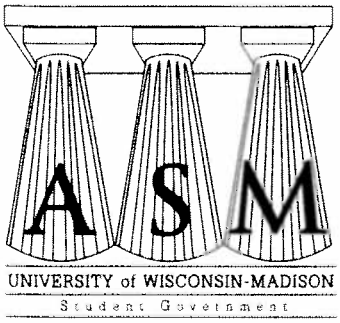

no date

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Resolution to Oppose SB466 and AB561

The Associated Students of Madison's Legislative Affairs Committee is in opposition to SB466 and AB561. We believe that these bills will discourage tenants from speaking up for their basic housing rights. There are three clauses in particular that we are in strong opposition to.

First, there is a clause in the bill that allows a landlord to dispose of any property or possessions left by a tenant without giving any notice. The landlord is able to profit off of the sale or disposal of the property and has the ability to charge the tenant for any costs incurred during the disposal of the property. This provision gives the landlord too much discretion and eliminates the current, common sense rule that the landlord must keep the property for a specified amount of time so that the tenant can pick it up.

Additionally, this bill prohibits a tenant from telling a building inspector, elected public official, or housing code enforcement agency about any housing problem if they have not first told the landlord in writing. This is particularly problematic for students who may have a landlord that owns a large amount of property and is difficult to get in touch with, or students who do not have good relationships with their landlords. This provision has the potential to scare students or first-time renters from asking that the appropriate housing conditions be upheld.

Finally, the bill allows landlords to put terms into the lease that may not be legal, such as a provision that states that a landlord will refuse to renew a rental agreement because a tenant contacted an entity for law enforcement services, health, or safety services. Previously, putting something like this into the lease would make the entire lease void. Now, only that part of the lease would be void. This will likely intimidate tenants and discourage them from seeking services from any of the above listed entities even if they were needed.

Currently, many students and first-time renters do not fully understand their rights as tenants and likely do not have great relationships with their landlords. The passage of these two bills would negatively impact tenant-landlord relationships and would likely confuse renters on what their housing rights are. We fear that renters would be discouraged from asking that their basic housing rights are provided by their landlord.

The ASM Legislative Affairs Committee is strongly opposed to SB466 and AB561 and discourages the passage of these two bills.

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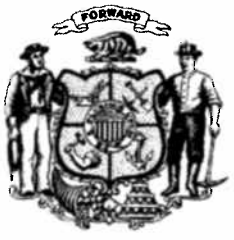

NRRA Compliance

as of January 10, 2012